

Theodore H. Frank (SBN 196332)
COMPETITIVE ENTERPRISE INSTITUTE
1310 L Street, NW, 7th Floor
Washington, D.C. 20006
Tel.: 202.331.2263
Fax.: 202.331.0640
Email: Ted.Frank@cei.org

Attorney for *Amicus Curiae*
COMPETITIVE ENTERPRISE INSTITUTE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

COINBASE, INC.,

Respondent.

Case No. 3:17-cv-01431-JSC

**NOTICE OF MOTION AND MOTION OF
COMPETITIVE ENTERPRISE INSTITUTE
FOR LEAVE TO FILE AN *AMICUS*
CURIAE BRIEF IN OPPOSITION TO
PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS**

Courtroom: F (15th Floor)
Judge: Hon. Jacqueline Scott Corley

1 TO ALL PARTIES AND THEIR ATTORNEYS:

2 PLEASE TAKE NOTICE THAT the Competitive Enterprise Institute hereby moves the Court
3 pursuant to Civil L.R. 7-11 for leave to file a brief *amicus curiae* in the above-captioned case in
4 support of respondent Coinbase. A copy of the proposed amicus brief is appended as an exhibit to
5 this motion. Coinbase and the Intervenor consent to this motion; the government opposes it.

6 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

7 District courts have discretion to permit non-parties to participate in a case as *amici curiae*.
8 *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 U.S. Dist. LEXIS
9 4467, at *7 (N.D. Cal. Jan. 9, 2007). Such discretion is generally exercised liberally, as there are
10 no strict prerequisites that must be met to qualify for *amicus* status. *Id.* at *8. The sole criterion is
11 that the applicant must demonstrate that its “participation is useful or otherwise desirable to the
12 court.” *Id.* (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991)). Trial
13 courts frequently accept *amicus* briefs from non-parties where the legal issues in a case “have
14 potential ramifications beyond the parties directly involved.” *Sonoma Falls Devs., LLC v. Nev.*
15 *Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quoting *Cobell v. Norton*, 246
16 F. Supp. 2d 59, 62 (D.D.C. 2003)). This is just such a case. And the parties and the Court have
17 previously contemplated that *amicus* briefs will be filed in this very case. *See* Stipulation and
18 Order, ECF No. 22, at 3 (stipulating that several parties “have indicated that they may wish to file
19 *amicus curiae* briefs in this action”), *id.* at 7 (setting August 3 due date for *amicus* briefs).

20 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

21 Founded in 1984, Competitive Enterprise Institute (CEI) is a public interest organization
22 dedicated to protecting limited government and individual liberty. CEI, which is independent of
23 the parties to this action (and has no ties to them), has extensive experience with the subjects
24 addressed in their *amicus curiae* brief – such as the role of virtual currencies, the privacy and
25 property implications of broad government data demands in the information age, and the use and
26 misuse of government subpoenas.¹

27 ¹ *See, e.g.*, Jim Harper & Andreas Kohl, Competitive Enterprise Institute, *Help the World's Poor*
28 *with a Bitcoin and Blockchain Future*, ValueWalk, May 4, 2017 (available in Westlaw); *IRS*

CEI has no parent companies or stockholders and no financial interest in this action.

III. AMICUS CURIAE'S EXPERTISE WILL BENEFIT THIS COURT

On the basis of its research in and familiarity with the fields of virtual currency, data privacy, financial markets, and related areas of law, *amicus* meets the broad discretionary standard for filing an amicus curiae brief. Moreover, CEI's brief contains an alternative legal theory for quashing the subpoena that complements the arguments of Coinbase and the intervenor. Thus, it has "unique information [and] perspective that can help the [C]ourt," by adding scientific context to this record evidence. *Sonoma Falls*, 272 F. Supp. 2d at 925. Moreover, "the potential ramifications [of this case] beyond the parties directly involved" are broad, as the outcome will determine the scope of the privacy rights of virtual currency users – and customers of financial institutions more generally. *Id.*

IV. THIS MOTION IS TIMELY

This motion has been filed within the time anticipated for seeking leave to file an *amicus* brief. See May 30 order setting briefing schedule (ECF No. 22) at 7 ("August 3, 2017" is the due date for "any motions for leave to file amicus curiae briefs").

V. CONCLUSION

For the foregoing reasons, CEI respectfully requests this Court's leave to submit the attached brief *amici curiae*.

Respectfully submitted,

Dated: August 3, 2017

By: /s/ Theodore H. Frank
THEODORE H. FRANK (SBN 196332)

Attorney for *Amicus Curiae*
COMPETITIVE ENTERPRISE INSTITUTE

Demands Private Consumer Data from Bitcoin Exchange, Heartland Institute, January 26, 2017 (quoting Jim Harper about the market for Bitcoin and the IRS subpoena); Jim Harper, *The IRS Just Declared War on Bitcoin Privacy*, The Freeman, Nov. 21, 2016; Walter Olson, *Is New York's Climate-Speech Probe Constitutional?*, Cato Institute, Feb. 9, 2016 (quoting CEI lawyer about legal issues raised by government document demands); *IRS Proposed Rules Could Illegally Restrict Speech*, CNS News, Feb. 28, 2014 (CEI lawyer discusses IRS and targeting of Tea Party).

CERTIFICATE OF SERVICE

United States of America v. Coinbase, Inc.
N.D. Cal Case No. 3: 17-cv-01431-JSC

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **August 3, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **August 3, 2017**.

/s/ Theodore H. Frank
THEODORE H. FRANK